

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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CLERK U.S. DISTRICT COURT  
W.D. OF TN, JACKSON

UNITED STATES OF AMERICA,

Plaintiff,

VS.

Civil No. 1:05-1103-T/An

Six (6) Firearms and Various Ammunition,

Defendant.

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ORDER DENYING REQUEST TO CLERK FOR ENTRY OF DEFAULT

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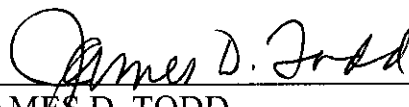
The United States of America's Request to Clerk for Entry of Default is DENIED,  
and the Clerk is DIRECTED not to enter default. The record discloses that:


1. On January 4, 2005, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATFE") received a "claim" from one Kurt M. Hayer, whom the Government also describes as "owner" of the personal property that is the subject of the instant civil forfeiture action. *See* Verified Compl. of Forfeiture ¶ 10 [Dkt. # 1]; Aff. of Default at p. 1 [Dkt. # 9].
2. On August 10, 2005, ATFE personally served Kurt M. Hayer with process.
3. On August 19, 2005, Kurt M. Hayer filed a hand-written claim with the Clerk of Court asserting that he is the sole and lawful owner of the subject property and requesting that ATFE return the property to his possession.
4. The August 19, 2005 letter was never served upon any representative of the Government before the Government requested the entry of default.
5. The Government requested the entry of default on November 3, 2005, without knowledge of the August 19, 2005 claim that was filed nine days after the Government served Kurt M. Hayer with process.

Under these circumstances, the Clerk should not enter default. Kurt M. Hayer asserted his interest in Defendant nine days after the Government's service of process, but he failed to serve a copy of his claim upon counsel for the Government. The Government may be able to show that Kurt M. Hayer's handwritten letter with the Clerk asserting sole ownership was not legally adequate and cannot be cured, but that legal argument should be directed to the court and not to the Clerk. Accordingly, the court ORDERS that:

1. The Clerk of Court is directed not to enter default at this time.
2. Kurt M. Hayer, whom the Government describes as "owner," is ORDERED to serve a copy of his claim upon counsel for the Government.
3. The Government is not prohibited from contesting the validity Kurt M. Hayer's claim after it receives a copy of his claim in compliance with this Order.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE

  
\_\_\_\_\_  
DATE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 10 in case 1:05-CV-01103 was distributed by fax, mail, or direct printing on November 16, 2005 to the parties listed.

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Honorable James Todd  
US DISTRICT COURT